

REMARKS

After entry of this amendment, claims 1-3, 5-9, 11-14 and 16 are pending. Applicants respectfully request entry of the above claim amendments as they are believed to put the claims in condition for allowance or, alternatively, in better form for consideration on appeal. Thus, entry under 37 CFR 1.116 is correct. Claims 4, 10, 15 and 17-21 have been cancelled without prejudice to or disclaimer of Applicants' right to pursue the non-elected or cancelled subject matter in a later application. Claims 1, 9 and 12 have been amended without prejudice or disclaimer and find support *inter alia* in the original claims. Claims 9 and 12 find further support in the specification at page 18, lines 9-10, and Example 4. No new matter has been added. A Notice of Appeal is being filed together herewith to allow time to consider this response.

Claim Rejection – 35 USC § 112

Claims 1-3 and 5-16 remain rejected under 35 U.S.C. § 112, first paragraph, for allegedly lack of an enabling disclosure. Applicants respectfully disagree. However, to expedite prosecution, claim 1 has been amended without prejudice or disclaimer to recite the nucleotide sequence with more specificity. Claims 9 and 12 have also been amended to recite the nonhuman organism with more specificity. Applicants respectfully submit that the claims as amended overcome the present rejection.

It is noted initially that, according to the Examiner, the specification is enabling for an isolated nucleic acid encoding SEQ ID NO: 2 or homologues/variants having 95% identity to SEQ ID NO: 2 and having Δ -4 desaturase activity. Office Action at pages 2-3. Therefore, it is respectfully submitted that claim 1 as amended overcomes the nonenablement rejection to claims 1-3 and 5-8 as suggested by the Examiner as stated in the Office Action at page 5.

Moreover, as stated by the Examiner in the Office Action at pages 2-3, the specification is enabling for a transgenic yeast or plant transformed with the aforementioned nucleic acid and the process of producing polyunsaturated fatty acids using such nucleic acid. Thus, it is further submitted that the amendment made to claim 12 overcomes the nonenablement rejection as to claims 12-14 and 16.

As to claims 9 and 11, Applicants respectfully submit that, in addition to yeasts and plants, the specification further enables a transgenic microorganism transformed with the nucleic

acid as recited in claim 1. One example of such a transgenic microorganism could be *E. coli* or *Argobacterium* containing the recited nucleic acid for cloning or transformation purpose, for which the specification provides sufficient guidance as to how to make and use such microorganism. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested in light of the amendment.

For at least the above reasons and in light of the present amendment, it is respectfully submitted that the claims recite a scope of subject matter which a skilled artisan could clearly make and use according to the teaching in the specification. Reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

For at least the above reasons, Applicants respectfully request withdrawal of the rejection and allowance of the claims. If any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number given below.

Applicants reserve all rights to pursue the non-elected claims and subject matter in one or more divisional applications.

Accompanying this response is a petition for a two-month extension of time to and including April 27, 2009, pursuant to 37 CFR § 1.7(a), to respond to the Office Action mailed November 26, 2008 with the required fee. No further fees are believed due. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00136-US from which the undersigned is authorized to draw.

Respectfully submitted,

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